

May 23, 1997

Ms. Carol M. Browner  
Administrator  
United States Environmental Protection Agency  
401 M. Street S.W.  
Washington, D.C. 20460

Dear Administrator Browner:

As you know, a Small Business Advocacy Review Panel was established in accordance with section 609(b) of the Regulatory Flexibility Act (RFA) as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) for EPA's planned rulemaking setting emission standards for certain nonroad diesel engines. This was the first SBREFA panel established for an EPA proposal. Members of the Panel include Thomas E. Kelly (Chair), Small Business Advocacy Chairperson/EPA; Jere Glover, Chief Counsel for Advocacy, OA/SBA; Chet France, Office of Air and Radiation/EPA; and Sally Katzen, Administrator, OIRA/OMB. The Panel hereby transmits its report for your consideration. The report includes a summary of the comments received from representatives of the small businesses that will be subject to the nonroad diesel engine rule and the Panel's findings with regard to certain regulatory flexibility issues. The full Panel report is enclosed; this letter summarizes its main points.

It is important to note that the Panel's findings and discussion are based on the information available at the time this report was drafted. EPA is continuing to conduct analyses relevant to the proposed rule, and additional information may be developed or obtained during the remainder of the rule development process and from public comment on the proposed rule. Any options the Panel identifies for reducing the rule's regulatory impact on small entities may require further analysis and/or data collection to ensure that the options are practicable, enforceable, environmentally sound and consistent with the statute authorizing the rule.

#### Summary of Small Entity Outreach

The types of small entities to which the nonroad diesel rule will apply include small manufacturers of diesel engines, small manufacturers of equipment that uses those engines, small businesses that modify engines for marine use (called "marinizers") and, potentially, engine rebuilders or remanufacturers. Beginning before SBREFA's enactment, EPA conducted extensive outreach to members of the affected industries and their representatives, including small entities. This outreach increased the Agency's understanding of the nature of their business and the challenges these businesses face.

In January of 1997, EPA published a Supplemental Advance Notice of Proposed Rulemaking (Supplemental ANPRM), which in part requested comment on small business concerns. During the comment period for the Supplemental ANPRM, EPA held a workshop in Chicago attended by

representatives of potentially affected industries, several of which represented small businesses. The workshop devoted a significant period of time to discussing small entity issues. In addition to the comments made at the workshop, EPA received additional written comments, including comments on small entity concerns, during the comment period on the Supplemental ANPRM. The comments EPA received during this period included several new ideas suggesting how EPA might provide flexibility to affected industries, especially those that are small entities.

On November 13, 1996, EPA notified the SBA Chief Counsel for Advocacy that a small business advocacy review panel would likely be required and provided the Chief Counsel with a list of suggested small-entity representatives developed during EPA's previous outreach. The Chief Counsel and EPA subsequently agreed on a final set of representatives, a list of whom is included in the enclosed Panel report. EPA then conducted further outreach to these representatives, resulting in development of ten concepts that had the potential to significantly reduce the impact on their businesses. A list of these ten concepts with EPA staff comments on "pros" and "cons" for each concept, entitled "Preliminary EPA Staff Assessment of Alternative Equipment Manufacturer Flexibility Concepts," is appended to the enclosed Panel report.

In March 1997, the Panel for the nonroad diesel rule was convened. The Panel distributed a summary of the ten flexibility concepts to the small entity representatives for further comment. The Panel then held a teleconference on May 2 which included most of the small entity representatives and allowed for broad interactive discussion and further clarification of potential regulatory options. The Panel then accepted further written comment from the representatives on these concepts.

The full Panel report summarizes the comments, oral and written, received from each of the small entity representatives and appends their written comments. In light of these comments, the Panel considered the regulatory flexibility issues specified by RFA/ SBREFA and developed the findings and discussion summarized below.

### Panel Findings and Discussion

Under RFA/SBREFA, the Panel is charged with addressing four regulatory flexibility issues related to the potential impact of the rule on small entities: the type and number of small entities to which the rule will apply; recordkeeping and reporting requirements applicable to those small entities; the rule's interaction with other Federal rules; and regulatory alternatives that would minimize the impact on small entities consistent with the stated objectives of the statute authorizing the rule. The Panel's findings and discussion with respect to each of these issues are summarized below. A full discussion of Panel activities is presented in the enclosed Panel report.

Type and Number of Affected Small Entities. As indicated above, the types of small entities to which the rule will apply include small engine manufacturers, small equipment manufacturers, small engine marinizers and potentially engine rebuilders or remanufacturers. The number of these small entities is not yet known. The small entity representatives had little or no information on this point. The Panel supports EPA's ongoing efforts to work with the affected industries to develop information on the number of small entities that will be subject to the rule.

Recordkeeping and reporting requirements. The bulk of the recordkeeping and reporting requirements under this rule arise from the requirement that engine manufacturers must certify that their engines meet the emission standards set by the rule. These certification requirements are likely to be modeled on analogous requirements already applicable to other classes of nonroad engines. Previous EPA efforts have already served to streamline the certification process. Marinizers' suggestions (included in the report) for further streamlining certification procedures for marinized engines are worthy of Agency consideration. Any recordkeeping or reporting requirements associated with providing small equipment manufacturers and others with additional flexibility have not been developed; the Panel urges EPA to keep any such requirements to a minimum. There is little sense in providing small businesses with flexibility only to bog them down with excessive paperwork.

Interaction with Other Federal Rules. The Panel did not receive any information indicating that any other Federal rules would duplicate, overlap or conflict with the proposed rule, with the possible exception of an Occupational Health and Safety Administration (OSHA) ambient carbon monoxide regulation. The Panel encourages EPA to consider the potential interaction of the Nonroad Diesel rule with this OSHA regulation.

Regulatory Alternatives. The Panel considered the ten flexibility concepts suggested by the small entity representatives and listed in the Panel report. The Panel considered each of these alternatives in light of several criteria including whether the alternative is consistent with the Clean Air Act; whether it would achieve emission reductions comparable to those the basic proposed program would achieve; whether it is reasonably practicable and enforceable; and whether some concepts may complement each other to maximize the overall flexibility for small entities.

The Panel believes that five of the ten suggested concepts, considered as an integrated package, would provide significant flexibility and burden reduction for small entities subject to the Nonroad Diesel regulations that EPA plans to propose. Further, incorporation of these five concepts would allow EPA to meet the emission-reduction goals of the program while maximizing the compliance flexibility for small manufacturers of nonroad equipment and small marinizers. The Panel believes that EPA should consider conducting further analysis on the following five concepts and proposing or soliciting comment on them in its planned Notice of Proposed Rulemaking:<sup>1</sup>

- Concept 3 Allow Respreading of OEM Exemption Allowances
- Concept 4 Equity between <50 hp and >50 hp Categories
- Concept 7 Allow OEMs to buy Engine Program Credits
- Concept 8 Expand Small Volume Allowance to More Than One Model
- Concept 10 Relief for Hardship Cases

In addition to the above package of flexibility concepts, the Panel believes EPA should carefully consider all comments received during this outreach process, as well as comments which will be

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<sup>1</sup>SBA recommends the inclusion of these five concepts as part of the proposal.

received as the rulemaking proceeds, on these and other issues of concern to small entities.

Sincerely,

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Thomas E. Kelly, Chair  
Small Business Advocacy  
U.S. Environmental Protection Agency

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Sally Katzen, Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget

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Jere W. Glover  
Chief Counsel for Advocacy  
U.S. Small Business Administration

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Chester J. France, Director  
Engine Programs and Compliance Division  
U.S. Environmental Protection Agency

Enclosure